

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

GABRIEL SCHAAF,

Petitioner,

: Case No. 3:20-cv-090

- vs -

District Judge Thomas M. Rose  
Magistrate Judge Michael R. Merz

TIM SHOOP, Warden,  
Chillicothe Correctional Institution,

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Respondent.

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**ORDER VACATING JUDGMENT; RECOMMITTAL ORDER**

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This habeas corpus case, brought *pro se* by Petitioner Gabriel Schaaf, is before the Court on Petitioner's Objections (ECF No. 18) to the Magistrate Judge's Report and Recommendations ("Report," ECF No. 15).

The Report was filed and served October 21, 2020. As the Report noted, this allowed Petitioner seventeen days to file objections (ECF No. 15, PageID 807). As an incarcerated person, Petitioner could file objections by depositing them in the prison mail system not later than the seventeenth day after the Report was filed, or November 9, 2020. The Objections contain Petitioner's representation that he deposited the Objections in the prison mail system on November 6, 2020 (ECF No. 18, PageID 810, 819). For whatever reason, the Objections were not postmarked until November 10, 2020, (*Id.* at PageID 820) and were not received by the Clerk and docketed until November 16, 2020.

Unfortunately, the Objections were not received until the Court had entered an Order adopting the Report as if no objections were being made and a Judgment (ECF Nos. 16 & 17). While there is no independent corroboration of when Petitioner deposited his Objections, the Court takes him at his word and will consider the Objections on the merits. Accordingly, the Order Adopting Report and Recommendations (ECF No. 16) and the Judgment (ECF No. 17) are VACATED, pursuant to Fed.R.Civ.P. 60.

The District Judge has preliminarily considered the Objections and believes they will be more appropriately resolved after further analysis by the Magistrate Judge. Accordingly, pursuant to Fed. R. Civ. P. 72(b)(3), this matter is hereby returned to the Magistrate Judge with instructions to file a supplemental report analyzing the Objections and making recommendations based on that analysis.

November 17, 2020.

\*s/Thomas M. Rose

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Thomas M. Rose  
United States District Judge